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20
21 IN THE UNITED STATES DISTRICT COURT
22
23 FOR THE DISTRICT OF ARIZONA

24 C.M., on her own behalf and on behalf of
25 her minor child, B.M.; L.G., on her own
26 behalf and on behalf of her minor child,
27 B.G.; M.R., on her own behalf and on
28 behalf of her minor child, J.R.; O.A., on
her own behalf and on behalf of her
minor child, L.A.; and V.C., on her own
behalf and on behalf of her minor child,
G.A.,

No. 2:19-cv-05217-SRB

STATUS REPORT

Plaintiffs,

v.

United States of America,

Defendant.

1 The United States respectfully submits this status report regarding the status of
2 discovery of electronically-stored information (ESI) in this matter.¹ To date, the
3 United States has made several productions to Plaintiffs of documents it has been able
4 to gather and review pursuant to its discovery obligations under the Mandatory Initial
5 Discovery Pilot Program (“MIDPP”). However, the ESI searches developed by the
6 parties in accordance with MIDPP have resulted in a very high volume of ESI that has
7 presented significant challenges to the United States, which it wishes to bring to the
8 Court’s attention in this status report and to discuss with the Court in a conference.

9 On August 17, 2020, the parties submitted a Joint Discovery Plan (ECF 60).
10 The Joint Discovery Plan sets forth several stages of discovery, in which certain
11 aspects of discovery are to occur.

12 Stage 1 of the Joint Discovery Plan includes the review and production of ESI
13 collected pursuant to ESI searches developed by the parties in accordance with
14 MIDPP. With respect to this ESI, the parties stated as follows in the Joint Discovery
15 Plan:

16 Throughout this stage, the parties will communicate regarding the
17 status of ESI searches and productions. The parties will produce
18 ESI as expeditiously as possible on a rolling basis. The ESI
19 searches currently being discussed by the parties involve
20 numerous search terms and dozens of custodians from multiple
21 federal agencies, and at this point the amount of data to be
22 collected and reviewed pursuant to these searches is unknown, as
23 is the time reasonably necessary to perform the searches, reviews,
24 and productions. As the ESI searches progress and greater insight
is gained into the amount of time necessary to complete the ESI
searches, reviews, and productions, the parties will confer as
necessary if it is believed that the stages described herein need to
be extended.

25 ECF 60 at 9.

27

¹ A Status Report also is being submitted in *A.P.F. v. United States*, Case No.
28 2:20-0065-SRB.

1 On August 25, 2020, the Court entered an order resolving certain
 2 disagreements between the parties regarding the date range for ESI searches
 3 and the inclusion of certain search strings, and ordered that substantially all of
 4 the ESI production be complete by December 31, 2020. ECF 61.²

5 The ESI searches developed by the parties in accordance with MIDPP
 6 consist of several dozen custodians from multiple Federal agencies and
 7 fourteen multi-term search strings, with a date range spanning approximately
 8 seventeen (17) months.³ To date, the ESI that the United States has collected
 9 for review from the Department of Justice (DOJ), the Department of Homeland
 10 Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and
 11 Customs and Border Protection (CBP) as a result of these ESI searches consists
 12 of several hundred thousand documents totaling several million pages. A
 13 substantial additional amount of ESI for review resulting from these searches is
 14 still expected. In addition, the parties are meeting and conferring regarding
 15 additional ESI searches for the Department of Health and Human Services
 16 (HHS).

17 This volume of ESI has presented significant challenges to the above-
 18 mentioned agencies in their efforts to locate, collect, and transfer this ESI to
 19 the United States, and to the United States in its efforts to review said ESI.

20 ² In *A.P.F.*, the Court adopted this discovery plan, and allowed for some
 21 supplemental policy-related discovery. *See A.P.F.* ECF 44, 56.

22 ³ The ESI searches addressed herein are referred to as the “policy-level”
 23 searches. In addition, the parties have developed pursuant to MIDPP several
 24 “plaintiff-specific” ESI searches aimed at locating relevant information specific to the
 25 particular individuals who brought this suit.

1 The United States has expressed its position to Plaintiffs that this volume of
2 ESI is unduly burdensome and not proportional to the needs of the case.
3

4 The parties have engaged in discussions regarding ways to reduce the overall
5 volume of ESI, and the use of Technology Assisted Review (TAR) to facilitate the
6 review of ESI. However, it is clear to the United States that a revised timeline that
7 allows significantly more time for the review and production of ESI is necessary.
8 Discussions among the parties regarding a plan and revised timeline for the review
9 and production of ESI will continue, and the United States remains hopeful that the
10 parties will be able to agree on a plan. In the meantime, the United States believes
11 that a conference with the Court to discuss these matters in more detail and to seek the
12 Court's guidance will be beneficial to this process. At the United States' request, the
13 parties will place a call to chambers for the United States to request a conference.
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17 Dated: November 25, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

s/ Phil MacWilliams
PHILIP D. MACWILLIAMS
Attorney for United States of America